

Exhibit 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

- - -

FIELDTURF USA, INC. and
FIELDTURF TARKETT, INC.,

Plaintiffs,

Case No. 10-12492

vs.

Hon. Stephen J. Murphy, III

ASTROTURF, LLC,

Defendant.

JURY TRIAL

Afternoon Session

BEFORE THE HONORABLE STEPHEN J. MURPHY, III

United States District Judge

Theodore Levin United States Courthouse

231 West Lafayette Boulevard

Detroit, Michigan

Monday, October 5, 2015

APPEARANCES:

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1 with the three-prong device.

2 Q. So if you focus on the -- we looked at the ruler, if you
3 focus on the probe, the number 33 in the upper left, what
4 does that represent?

5 A. That is the depth in millimeters in that particular
6 position measured by the probe.

7 Q. Okay. So if you -- if I'm understanding it correctly,
8 with the ruler that location measured 20 millimeters, and
9 with the probe Mr. Kolitzus measured 33 millimeters; is that
10 right?

03:17

11 A. That's correct.

12 Q. Okay. In your view, does that mean that the measurement
13 techniques are uncertain and that the actual depth is
14 unknowable?

15 A. Well, yes, you can't -- common sense tells us that it is
16 the same position in the same box. Now, the infill depths
17 can only be one number, it is what it is; it can't at the
18 same time be both 20 millimeters and 33, so what we know from
19 that is there is an error there in measurement.

03:17

20 Q. An error in the way that Mr. Kolitzus measured it?

21 A. Yes.

22 MR. DeMEO: Objection.

23 THE COURT: What's the objection?

24 MR. DeMEO: Your Honor, there is no basis for that
25 conclusion as to that was Mr. Kolitzus' error in his

1 measurement or which of those may be in error or --

2 THE COURT: Okay.

3 MR. WARNER: I'm going to ask the witness to
4 explain.

5 THE COURT: Go ahead.

6 BY MR. WARNER:

7 Q. So can you explain, sir, how do you know that that's a
8 measurement error or why do you conclude that's a measurement
9 error?

03:17 10 A. Because it cannot simultaneously be 20 and
11 33 millimeters.

12 Q. Because it is the same spot --

13 A. It is the same spot in the same box, it is exactly the
14 same -- correct, I don't see how I can reach any other
15 conclusion.

16 Q. Now, if you wanted to determine which of those
17 measurements was the actual depth in the field how would
18 someone skilled in the art go about doing that?

03:18 19 A. Well, there are several methods. You could, of course,
20 simply measure it again and see what your second reading
21 says. You could excavate the infill material right down to
22 the primary backing, a little trench, and then put a
23 straightedge over the top of the trench and measure it
24 directly with a ruler, you could do that, but the easiest way
25 and the way I would have done it is to simply measure the

1 height of the free ribbon because Mr. Kolitzus already
2 measured the pile height, so if you measure the height of the
3 free ribbon and subtract that from the pile height, that's
4 the infill depth -- that's the true infill depth.

5 Q. So would a person of ordinary skill in the art in 1997
6 have done that to determine which one of those measurements
7 is the correct one?

8 MR. DeMEO: Objection, this is not covered in
9 Mr. Hawkins' report.

03:19 10 MR. WARNER: I disagree, Your Honor. He's talked
11 about the --

12 THE COURT: Overruled. Go ahead.

13 A. Sorry. Could you repeat the question?

14 BY MR. WARNER:

15 Q. Sure. Would a person of ordinary skill in the art in
16 1997 have used that same method to determine which is the
17 right number?

18 A. I believe so, yes.

19 Q. Now, did Mr. Kolitzus do that?

03:19 20 A. No, he didn't do it at all.

21 Q. So are you able to draw any conclusions from the data
22 that he provided about which one is right?

23 A. Absolutely not, I cannot tell with any of those readings
24 which are correct and which are mistaken.

25 Q. So on the question of infill depth in the prior art

1 of questions about things that the patent disclosed or didn't
2 disclose?

3 A. Yes.

4 Q. So, for instance, he said does it disclose specific
5 measuring devices and things like that?

6 A. That's what he said, yes.

7 Q. Did it disclose specific ways to measure infill depth in
8 a field?

9 A. I recall all of that.

04:22 10 Q. My question for you is this, putting yourself in the
11 mind of a person of ordinary skill in the art back in 1997,
12 would that person had been able to pick up the patent, read
13 it, and go out and build a field with substantially
14 two-thirds infill?

15 A. Absolutely.

16 MR. WARNER: Nothing further.

17 THE COURT: Okay. You want to respond to that at
18 all, Mr. DeMeo?

19 MR. DeMEO: No, Your Honor.

04:23 20 THE COURT: Okay. Great. Thank you both very
21 much. Wow, look at that, the lawyers get you out of here
22 before 4:30. How do you feel about that?

23 Dr. Hawkins, you are done, you may be on your way.

24 Okay.

25 A. Thank you.